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Application Number 10/821.334
Filing Date April 9, 2004
Inventor(s) Bellick, et al.
Examiner Name Gay Spahn
Attorney Docket Number ARP 5588.1

Art Unit 3673
Confirmation No. 9991

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Date

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Bellick, et al.
Serial No. 10/821,334
Filed April 9, 2004
Confirmation No. 9991
For SLEEPING BAG WITH VENTED FOOTBOX
Examiner Gay Spahn

Art Unit 3673

September 23, 2005

APPEAL BRIEF

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REFERENCES

<u>Sensory Publishing, Inc., Manual of Patent Examining Procedure, 8th Ed., Rev. Two (2004)</u>	
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Webster's Third New International Dictionary of the English Language Unabridged, Merriam-Webster, Inc., 2002...	7

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Serial No. 10/821,334
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For SLEEPING BAG WITH VENTED FOOTBOX
Examiner Gay Spahn

Art Unit 3673

September 23, 2005

APPEAL BRIEF

This is an appeal from the final rejection of the claims of the above-identified application made in the final Office action dated March 25, 2005. A Notice of Appeal was filed on June 27, 2005.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is American Recreation Products, Inc. of 1224 Fern Ridge Parkway, St. Louis, Missouri 63141, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any pending appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

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III. STATUS OF CLAIMS

Claims 1-18 are currently pending in the application. A copy of the pending claims appears in the Claims Appendix of this Brief.

Claims 1, 10, and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,881,405 (Garrigues) in view of U.S. Patent No. 6,175,976 (Cantwell).

Claims 1-7, 11-13, 16, and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,234,546 (Basch) in view of Cantwell.

Claims 8, 9, and 14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Basch in view of Cantwell and in further view of U.S. Patent No. 2,622,248 (Schaye).

Claim 15 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Basch and Cantwell in view of U.S. Patent No. 6,718,577 (Li).

The rejections of claims 1-18 under 35 U.S.C. §103(a) are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the

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following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

The present invention is directed generally to a vented sleeping bag 1 comprising an elongate shell 5 defining an inner volume sized and shaped to receive a user therein. Page 3, lines 26-28, Figs. 1-4. The elongate shell 5 includes a head end 7, a foot end 9, left and right sides 11, 13 extending longitudinally of the shell. Page 3, lines 28-30, Figs. 1, 3, and 4. An overlying portion 19 is adapted to overlie the user, and an underlying portion 21 is adapted to underlie the user. Page 4, lines 18-21, Fig. 3. A fastener 20 selectively joins the overlying and underlying portions 19, 21 such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell 5 by the user. Page 4, line 35 through page 5, line 2, Fig. 3. At least one vent 3 in the overlying portion 19 of the shell 5 is located adjacent the foot end 9 of the shell between the left and right sides 11, 13 of the shell. Page 6, lines 27-34, Figs. 1-4. A closure 27 is selectively movable between a closed position for closing the at least one vent 3 and an open position for creating a vent opening 29 for ventilating the inner volume of the shell 5. Page 5, lines 20-36, Figs. 1 and 4.

In another configuration, the present invention is directed generally to a vented sleeping bag 1 comprising an elongate shell 5 defining an inner volume sized and shaped to receive a user therein. Page 3, lines 26-28, Figs. 1-4. The elongate shell 5 includes a head end 7, a foot end 9, left and right sides 11, 13 extending longitudinally of the shell. Page 3,

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lines 28-30, Figs. 1, 3, and 4. An overlying portion 19 is adapted to overlie the user, and an underlying portion 21 is adapted to underlie the user. Page 4, lines 18-21, Fig. 3. A fastener 20 selectively joins the overlying and underlying portions 19, 21 such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell 5 by the user. Page 4, line 35 through page 5, line 2, Fig. 3. At least one longitudinal vent 3 in the overlying portion 19 of the shell 5 is located between the left and right sides 11, 13 of the shell and extending longitudinally of the shell. Page 6, lines 27-34, Figs. 1-4. A closure 27 is selectively movable between a closed position for closing the at least one longitudinal vent 3 and an open position for creating a vent opening 29 for ventilating the inner volume of the shell 5. Page 5, lines 20-36, Figs. 1 and 4.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellant appeals the rejection of claims 1, 10, and 18 under 35 U.S.C. §103(a) as being unpatentable over Garrigues in view of Cantwell.

B. Appellant appeals the rejection of claims 1-7, 11-13, 16, and 18 under 35 U.S.C. §103(a) as being unpatentable over Basch in view of Cantwell.

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C. Appellant appeals the rejection of claims 8, 9, and 14 under 35 U.S.C. §103(a) as being unpatentable over Basch in view of Cantwell and in further view of Schaye.

D. Appellant appeals the rejection of claim 15 under 35 U.S.C. §103(a) as being unpatentable over Basch and Cantwell in view of Li.

VII. ARGUMENT

A. Claims 1, 10, and 18 are submitted to be patentable over Garrigues in view of Cantwell.

1. Claim 1

Claim 1 is directed to a vented sleeping bag comprising:

a) an elongate shell defining an inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end, left and right sides extending longitudinally of the shell, an overlying portion adapted to overlie said user and an underlying portion adapted to underlie said user;

b) a fastener selectively joining the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;

c) at least one vent in said overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell; and

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d) a closure selectively movable between a closed position for closing said at least one vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

The sleeping bag of claim 1 is adapted for use in a wide range of temperatures, from cold to warm. When the vent is closed, the bag conforms to the contours of a user so that air movement within the sleeping bag is minimized making the bag thermally efficient (Fig. 1). Thus, the sleeping bag is well suited for use in colder ambient temperatures. When the vent is open, the internal volume of the shell is increased and a vent opening is created which allows communication with outside air and circulation within the bag (Fig. 4). Thus, the sleeping bag of the present invention is also well suited for use in mild to warm ambient temperatures. In addition, the internal volume of the shell can be adjusted by opening and closing the vent, which allows the user to adjust the sleeping bag to conform to their fit preference. For example, if the user prefers a sleeping bag with less foot room (i.e., a mummy-type bag) the user can close the vent. However, if the user prefers more foot room (i.e., a rectangular bag) the user can open the vent.

Applicants submit that claim 1 is patentable over Garrigues in view of Cantwell in that these references fail to show or suggest a vented sleeping bag having at least one vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell.

Cantwell discloses a sleeping bag (10) having a slide fastener (30) for providing partial separation of the top

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section (24) from the bottom section (22) to allow easy entry and egress by the person using the bag. Cantwell fails to disclose or suggest a vent and thus, clearly fails to disclose or suggest at least one vent in the overlying portion of the shell.

As shown in Fig. 1, Garrigues discloses a bivouac sack (10) having a top (14), a bottom (12) and an end piece (16). A foot vent (40) in the end piece (16) cooperates with a vent duct (30) and a latitudinal opening (20) in the head end (18) to circulate air throughout the sack for venting and extracting internal moisture from the sack (10). Column 5, lines 7-30. The entire foot vent (40), as shown in Figs. 3, 4, and 7B, is disposed in the end piece (14), i.e., no portion of the foot vent (40) is positioned in the top (14) or bottom (12) of the sack (10). Thus, the top (14) of Garrigues' sack (10), which overlies the user, is free of the foot vent in the foot end. In other words, Garrigues does not show or suggest a vent on the overlying portion of the shell (i.e., the portion of the shell adapted to overlie the user).

The Office has taken the position that the vent duct (30) is part of a vent as recited in claim 1. In the Advisory Action, the Office asserts that Garrigues discloses a vent comprising the "combination of the foot vent (40) and the vent duct (30) and since the vent duct (30) is on the overlying portion, the claim language is met." Applicants respectfully disagree that Garrigues' vent duct is a vent as claimed.

In Garrigues, the vent may be considered the foot vent (40). However, the vent duct (30) is not a vent but instead is a duct or tube that is in fluid communication with the foot

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vent. A vent is "an opening or hole for the escape or passage of something (as of a gas or liquid) or for the relief of pressure within something (as a boiler)".¹ Emphasis added. Garrigues states that "The foot vent 40 allows stagnant air within the foot end 17 of the bivy sack 10 to escape and fresher outside air to enter." See column 3, lines 43-44. Thus, Garrigues description of his foot vent is consistent with the dictionary definition of a vent. But neither is consistent with the Examiner's position.

Moreover, Garrigues states that "The foot end 17 includes a foot vent 40 that is defined by edges of the top piece 14 and end piece 16. Garrigues definition of the foot vent 40 is substantially the same as the definition of a vent set forth at page 5, paragraph 21 of appellant's specification. The specification states that "[t]he vent is defined by adjacent edges 35 of the shell which are joined together when the closure is in its closed position (Fig. 1)." Both Garrigues and the present applications state a vent is defined by edges, which define an opening or vent. In view of the two specifications, the foot vent disclosed in Garrigues corresponds to the vent recited in claim 1.

As illustrated in Fig. 7B of Garrigues, the foot vent is clearly not positioned on the portion of the shell adapted to overlies the user. Instead, the vent of Garrigues is positioned on the portion of the sack adapted to be horizontally spaced from the feet of the user. Accordingly, Garrigues does not

¹ Webster's Third New International Dictionary Unabridged 2541 (2002).

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teach or suggest a vent in the overlying portion of the shell as recited in claim 1.

Both Garrigues and Cantwell fail to teach or suggest a vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell. Thus, the combination of Garrigues and Cantwell also fails to teach or suggest this element of claim 1. Since obviousness can only be established if every claim element is taught or suggested by the prior art², claim 1 is nonobvious and patentable over Garrigues in view of Cantwell.

Claims 2-10 and 18 depend directly or indirectly from claim 1 and are submitted to be patentable over the Garrigues in view of Cantwell for the same reasons as claim 1.

B. Claims 1-7, 11-13, and 16-18 are patentable over Basch in view of Cantwell.

1. Claim 1

Claim 1 stands further rejected under 35 U.S.C. §103(a) as being obvious over Basch in view of Cantwell. However, as recognized by the Office, these references fail to show or suggest a vented sleeping bag having a closure selectively moveable between a closed position for closing at least one vent and an open position for creating a vent opening.

As shown in Fig. 1, Basch discloses a coverall garment (1) for babies having a body portion (13), a hood (5), sleeves (2).

² MPEP §2143.03 citing *In re Royka*, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

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and a bottom (3). The body portion (13) has a longitudinally extending slide fastener (4) that can be moved between a closed position, and an open position for allowing access to the interior of the skirt portion (15), e.g., for changing the baby's diaper, placing a baby within the garment (1), or removing the baby from the garment. As illustrated in Fig. 6, the slide fastener (4) can be mounted such that the slide closes the slide fastener by moving it from a location near the neck (7) of the garment (1) towards the bottom (3) of the garment. Thus, the slide fastener allows access to the skirt portion (15) in order to change the baby's diaper without having to open the upper portion of the garment.

Basch does not disclose or suggest that the opening for accessing the skirt portion (15) of the garment can be used as a vent. Basch is a coverall garment for babies, not a sleeping bag. Such a garment does not suggest the need for a vent. In fact, Basch teaches away from a vent in the skirt portion. Basch states that "One of the primary objects of the invention is to simultaneously provide a completely closed bag for the feet and legs to prevent the baby or other person using same from becoming cold or kicking off the covers..." Column 1, lines 41-45. Accordingly, Basch fails altogether to disclose or suggest a vent and a vent closure as required by claim 1.

The Office asserts in the Advisory Action that "the fact that Basch does not disclose or suggest that the opening in the skirt portion 15 can be used as a vent does not mean that one of ordinary skill in the art would not recognize the the [sic] opening could well act as a vent." *Emphasis added.* Thus, the Office concedes that Basch "does not disclose or suggest...a

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vent." Basch's coverall garment therefore lacks not only a vent but must also lack a closure selectively movable between a closed position for closing the vent and an open position for creating a vent opening, as recited in claim 1.

Cantwell (like Basch) also fails to disclose or suggest a vent and a closure for a vent selectively movable between a closed and open position, as recited in claim 1. Cantwell discloses a sleeping bag (10) having a slide fastener (30) for providing partial separation of the top section (24) from the bottom section (22) to allow easy entry and egress by the person using the bag.

Basch and Cantwell, whether considered alone or in combination, fail to teach or suggest a closure selectively moveable between a closed position for closing at least one vent and an open position for creating a vent opening. As stated above, obviousness can only be established if every claim requirement is taught or suggested by the prior art. Accordingly, claim 1 is nonobvious and patentable over Basch in view of Cantwell.

Additionally, neither Basch nor Cantwell suggests the desirability of making the necessary modifications to the prior art devices to obtain the applicants' invention. The Federal Circuit has repeatedly warned that to imbue a skilled artisan with knowledge of an invention, when no reference of record conveys or suggests that knowledge, is to fall victim to the

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"insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher."³

The fasteners of Cantwell and Basch are both used for allowing access to and from the interior of the bag and garment, respectively. Thus, why would one of ordinary skill in the art be motivated to add the fastener of Cantwell to the garment of Basch since Basch already discloses a fastener for allowing access to the interior of the garment? Applicants agree with the Examiner that Cantwell and Basch disclose "functionally equivalent way[s] of providing means of egress and entry." See page 5, lines 13-18 of the final Office action. Thus, at most, one of ordinary skill in the art would be motivated to use either the fastener of Cantwell or the fastener of Basch to provide entry into and exit out of bag or garment. But one of ordinary skill in the art would clearly not be motivated to use both on the same bag or garment since doing so would be redundant. Thus, there is no motivation or suggestion to combine Cantwell with Basch. The Examiner's position set forth in the Advisory Action is "that if the zipper (4) of Basch were used as a vent, then one would need an alternate manner of entry and egress and therefore, it would be well within the skill of one of ordinary skill in the art to modify Basch to include the side zipper of Cantwell to act as a means of entry and egress when the zipper (4) of Basch is functioning as a vent" is flawed because there is no suggestion or motivation (nor does the

³ *W.L. Gore & Assoc. v. Garlock, Inc.*, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

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Examiner assert that there is any suggestion or motivation) to use the zipper disclosed in Basch to form a vent to begin with.

Moreover, Basch expressly teaches away from its combination with Cantwell. As described in lines 41-53 of column 1, Basch's coverall provides a bag for the user's feet and sleeves for the user's arms. The sleeves "allow the occupant more freedom of action than sleeveless sleeping bags, for instance, and to keep the occupant from becoming twisted around in the bag, which might otherwise be dangerous to infants". Column 1, lines 47-50. Since it is improper to combine references where the references teach away from their combination,⁴ the combination of Basch with Cantwell, which discloses a sleeveless sleeping bag, is improper.

For all of the above reasons, claim 1 is submitted as patentable over Basch in combination with Cantwell, since these references fail individually and collectively to disclose or suggest all of the features recited in claim 1.

Claims 2-10 and 18 depend directly or indirectly from claim 1 and are submitted to be patentable over the references of record for at least the same reasons as claim 1.

2. Claim 11

Claim 11 is directed to a vented sleeping bag comprising, *inter alia*, at least one longitudinal vent in the overlying portion of the shell located between the left and right sides of the shell and extending longitudinally of the shell, and a

⁴ *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

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closure selectively movable between a closed position for closing the at least one longitudinal vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

To the extent claim 11 includes the same recitations as claim 1, it is patentable for the same reasons. Claims 12-17 depending from claim 11 are submitted to be patentable.

3. Claim 17

Claim 17, which depends from claim 11, recites that the fastener is a slide fastener. Nowhere in the final Office action does the Examiner state why claim 17 is rejected, or even that claim 17 is rejected. If the examiner does not produce a *prima facie* case, the appellant does not need to submit evidence of nonobviousness.⁵ As a result, claim 17 is submitted to be patentable for the Examiner's failure to establish a *prima facie* case of obviousness.

C. Claims 8, 9, and 14 are patentable over Basch in view of Cantwell and in further view of Schaye.

1. Claim 8

Claim 8, which depends directly from claim 7 and indirectly from claim 1, further recites that the shell tapers toward the foot end of the shell when the closure is in its closed position and that the edges of the shell defining the vent are separable when the closure is in an open position to expand the inner

⁵ MPEP §2142

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volume of the shell adjacent the foot end of the shell. Thus, this claim is directed to one feature of the present invention wherein the sleeping bag can be converted from a tapered bag (e.g., a mummy-type bag) to a bag with a larger interior volume (e.g., a rectangular bag) and vice versa by opening and closing the vent.

Claim 8 is further patentable over Basch, Cantwell, and Schaye in that these references fail to teach or suggest a vented sleeping bag wherein the shell of the sleeping bag tapers toward the foot end of the shell when the vent closure is in its closed position.

As indicated by the Examiner at paragraph 4, page 6 of the final Office action, Basch and Cantwell fail to disclose a garment or sleeping bag that tapers toward the foot end when the vent closure is in a closed position.

Schaye fails altogether to disclose or suggest a vent. As illustrated in Figs. 1 and 6, Schaye discloses a child's snow-suit that can be converted into a bunting (or sleeping bag). In the configuration shown in Fig. 6, slider 88 can be used to join two short stringers 56, 58 to form the back B of the bunting (Fig. 7) and the front F of the bunting can be formed by using sliders 86, 90 to join two long stringers 52, 54. The sliders 86, 88, 90 can be adjusted to fully or partially separate the stringers 52, 54, 56, 58 for allowing the caregiver access to the interior of the bunting, for putting the bunting on a child, or taking the bunting off a child. Nowhere does Schaye disclose or suggest a vent for venting the bunting. Thus, the bunting of Schaye clearly does not taper toward the foot end of the bunting

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when the vent closure is in a closed position since Schaye fails to disclose a vent closure.

For these additional reasons, claim 8 is further patentable over the references of record including Basch, Cantwell, and Schaye.

2. Claims 9 and 14

Claims 9 and 14 depend from claims 1 and 11, respectively, and are patentable for the reasons set forth above with respect to claims 1 and 11.

D. Claim 15 is patentable over Basch and Cantwell in view of Li.

1. Claim 15

Claim 15 depends from claim 11 and recites that the sleeping bag further comprises a mesh cover attached to the shell for covering the vent opening, the mesh cover collapsing within the shell when the at least one longitudinal vent is closed.

As stated by the Examiner, Basch and Cantwell fail to disclose a mesh cover. See page 7, paragraph 5 of the final Office action. As a result, they must fail to disclose that the mesh cover collapses within the shell when the at least one longitudinal vent is closed. While the Examiner asserts that Li teaches a blanket with a mesh covering, nowhere does the Examiner contend that the mesh covering collapses within the blanket Li. Nor does the Examiner contend that it would have been obvious to collapse the mesh covering taught by Li within

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the garment taught by Basch or the sleeping bag taught by Cantwell.

Accordingly, the Examiner has failed to establish *prima facie* obviousness since to do so all the claimed feature must be taught or suggest by the prior art.⁶ If the examiner does not produce a *prima facie* case, the appellant does not need to submit evidence of nonobviousness.⁷

As a result, claim 15 is submitted to be patentable over Basch, Cantwell and Li since the Examiner failed to establish a *prima facie* case of obviousness.

⁶ MPEP §2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

⁷ MPEP §2142.

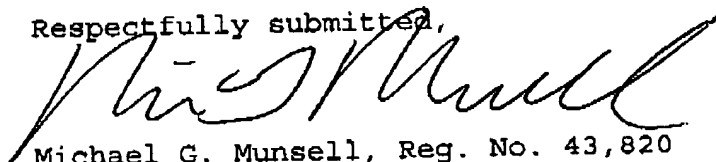
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VIII. CONCLUSION

For the reasons stated above, appellant respectfully requests the Office's rejections be reversed and claims 1-18 be allowed.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is also authorized to charge the fee for a one month extension of time to file this brief and any fee deficiency or credit any overpayment to Deposit Account No. 19-1345 in the name of Senniger, Powers.

Respectfully submitted,



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CLAIMS APPENDIX

1. (Previously presented) A vented sleeping bag comprising:
an elongate shell defining an inner volume sized and shaped
to receive a user therein, the elongate shell having a head end,
a foot end, left and right sides extending longitudinally of the
shell, an overlying portion adapted to overlie said user and an
underlying portion adapted to underlie said user;

a fastener selectively joining the overlying and underlying
portions such that the overlying and underlying portions can be
partially separated to allow entry into and exit out of the
inner volume of the shell by the user;

at least one vent in said overlying portion of the shell
located adjacent the foot end of the shell between the left and
right sides of the shell; and

a closure selectively movable between a closed position for
closing said at least one vent and an open position for creating
a vent opening for ventilating the inner volume of the shell.

2. (Original) The sleeping bag as set forth in claim 1
wherein the at least one vent extends longitudinally of the
shell.

3. (Original) The sleeping bag as set forth in claim 2
wherein the at least one vent extends longitudinally from
generally about the foot end of the shell toward the head end of
the shell a distance corresponding to about 10 to 50 percent of
the overall length of the shell.

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4. (Original) The sleeping bag as set forth in claim 3 wherein the at least one vent is about midway between the left and right sides of the shell.

5. (Original) The sleeping bag as set forth in claim 1 wherein the shell further comprises an end panel closing the foot end of the shell.

6. (Original) The sleeping bag as set forth in claim 5 wherein the at least one vent extends into the end panel of the shell toward the underlying portion of the shell.

7. (Original) The sleeping bag as set forth in claim 1 wherein the at least one vent is defined by adjacent edges of the shell, said edges being separable when the closure is in an open position to create said vent opening for ventilating the
5 inner volume of the shell.

8. (Original) The sleeping bag as set forth in claim 7 wherein the shell tapers toward the foot end of the shell when the closure is in its closed position, and wherein said edges of the shell defining said vent are separable when the closure is in an open position to expand the said inner volume of the shell adjacent said foot end of the shell.

9. (Original) The sleeping bag as set forth in claim 1 wherein the closure comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening.

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10. (Original) The sleeping bag as set forth in claim 1 further comprising a mesh cover attached to the shell for covering the vent opening, said mesh cover collapsing within the shell when the at least one vent is closed.

11. (Previously presented) A vented sleeping bag comprising:

an elongate shell defining a inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end, left and right sides extending longitudinally of the shell, an overlying portion adapted to overlie said user, and an underlying portion adapted to underlie said user;

a fastener selectively joining the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;

at least one longitudinal vent in said overlying portion of the shell located between the left and right sides of the shell and extending longitudinally of the shell; and

a closure selectively movable between a closed position for closing said at least one longitudinal vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

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12. (Original) The sleeping bag as set forth in claim 11 wherein the shell further comprises an end panel at the foot end of the shell and wherein the at least one longitudinal vent is partially positioned within the overlying portion and the end panel.

13. (Original) The sleeping bag as set forth in claim 11 wherein the at least one longitudinal vent is located about midway between the left and right sides.

14. (Original) The sleeping bag as set forth in claim 11 wherein the closure comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening.

15. (Original) The sleeping bag as set forth in claim 11 further comprising a mesh cover attached to the shell for covering the vent opening, said mesh cover collapsing within the shell when the at least one longitudinal vent is closed.

16. (Original) The sleeping bag as set forth in claim 11 wherein the at least one longitudinal vent is defined by adjacent edges of the shell, said edges being separable when the closure is in said open position for ventilating the inner volume of the shell.

17. (Previously presented) The sleeping bag as set forth in claim 11 wherein said fastener is a slide fastener.

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18. (Previously presented) The sleeping bag as set forth in
claim 1 wherein said fastener is a slide fastener.

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EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.